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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,360	03/06/2001	J. Ronald Wilk	016091.000001	3309

7590 11/21/2001

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EXAMINER

BADIO, BARBARA P

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/21/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,360

Applicant(s)

WILK, J. RONALD

Examiner

Barbara P Badio, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other: |

First Office Action on the Merits

Information Disclosure Statement

1. The examiner considered the information disclosure statement filed April 30, 2001, however, applicant's name and attorney's docket number did not correspond to those found on the present application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbit ('403) in view of Warren et al. ('583).

The claimed invention is a solution for topical treatment of skin sores comprising cedar leaf oil, zinc oxide and calamine lotion.

Nesbit teaches a topical composition for impregnating a bandage comprising from 0.5 to 40% wt of zinc oxide for treatment of skin diseases (see the entire article). The reference teaches the addition of other ingredients such as calamine and preservatives, including antibacterial and antiviral agents (col. 1, lines 5-42; col. 3, claims 1-3 and 5).

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The instant claims differ from the reference by reciting a composition comprising cedar leaf oil. However, cedar leaf oil is a known natural antibacterial active agent as taught by Warren et al. (col. 7, lines 1-8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to make the composition of Nesbit having cedar leaf oil as the antibacterial agent. The motivation to add an antibacterial such as cedar leaf oil is based on the teachings of Nesbit that said addition preserves the composition by removal of any bacteria not removed during sterilization (see col. 1, lines 13-20).

The instant claims further differ from the reference by reciting specific amounts of each component. However, when the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Optimization of the composition taught by Nesbit by variation of the amount of zinc oxide, calamine and antibacterial agent involves routine skill that is within the level of skill of the ordinary artisan in the art, and, thus, the claimed invention is prima facie obvious.

Claims 9-13, 15 and 27-30 recite the addition of ingredients such as an ointment base, hydrocortisone and vitamin K. However, (1) the use of lanolin and jelly as carriers or emulsifying agents in topical preparations is known in the art and (2) hydrocortisone, like calamine, is a known anti-inflammatory agent and vitamin K, like zinc oxide, is an antioxidant and, thus, their addition to a composition comprising calamine and zinc oxide would be obvious to the skilled artisan.

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Claims 32-39 recites differ skin diseases that are known in the art and, thus, would be known to the ordinary artisan in the art. The motivation to use the composition of Nesbit in each of the recited disease is based on the teachings of the reference that the composition is useful in treatment of skin diseases (see col. 1, lines 33-35).

3. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver in view of in view of Warren et al. ('583).

The claimed invention is a solution for topical treatment of skin sores comprising cedar leaf oil, zinc oxide and calamine lotion.

Oliver teaches a skin treatment composition comprising from 8 to 20% wt calamine, 0.05 to 3% wt of an antioxidant and 0.25 to 4% wt of an herbal antibacterial agent (see the entire article, especially col. 1, lines 37-43; col. 2, lines 14-47). The reference also teaches the addition of zinc oxide as an additional base between 8 to 20 % wt (col. 3, lines 12-15).

The instant claims differ from the reference by reciting a composition comprising cedar leaf oil as the herbal antibacterial agent. However, Warren et al. teach cedar leaf oil, like tea tree oil, is a known natural antibacterial active agents (col. 7, lines 1-8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to make the composition of Oliver utilizing cedar leaf oil instead of tea tree oil as the antibacterial agent. The motivation is based on the teaching of equivalent between tea tree oil and cedar tree oil by Warren et al.

The instant claims further differ from the reference by reciting specific amounts of each component. However, when the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Optimization of the composition taught by Oliver by variation of the amount of zinc oxide, calamine and antibacterial agent involves routine skill that is within the level of skill of the ordinary artisan in the art, and, thus, the claimed invention is prima facie obvious.

Claims 9-13, 15 and 27-30 recite the addition of ingredients such as an ointment base, hydrocortisone and vitamin K. However, (1) the use of lanolin and jelly as carriers or emulsifying agents in topical preparations is known in the art and (2) hydrocortisone, like calamine, is a known anti-inflammatory agent and vitamin K, like zinc oxide, is an antioxidant and, thus, their addition to a composition comprising calamine and zinc oxide would be obvious to the skilled artisan.

Claims 32-39 recites differ skin diseases that are known in the art and, thus, would be known to the ordinary artisan in the art. The motivation to use the composition of Oliver in each of the recited disease is based on the teachings of the reference that the composition is useful in treatment of a variety of skin ailments (see col. 3, lines 57-59).


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Tel phone Inquiry

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P Badio, Ph.D. whose telephone number is 703-308-4595. The examiner can normally be reached on M-F from 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


Barbara P Badio, Ph.D.
Primary Examiner
Art Unit 1616

BB
November 16, 2001